

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

X

WILHELMSEN PREMIER MARINE FUELS AS

07 Civ. 5798 (CM)

Plaintiff,

against

UBS PROVEDORES PTY LTD. a/k/a
USS-UBS INTERNATIONAL and
RAECORP INTERNATIONAL PTY LTD.,

**SUPPLEMENTAL
DECLARATION OF
ROSE HENNESSY IN
FURTHER OPPOSITION
TO PLAINTIFF'S
MOTION TO VACATE
DISMISSAL ORDER**

Defendants

X

Rose Hennessy, hereby declares, under penalty of perjury, that:

1. I am the Chief Financial Officer of UBS Providedores PTY LTD. ("UBS") and was so employed during all relevant times.
2. On March 7, 2007, UBS invoiced the U.S. Government for costs incurred bunkering various U.S. government vessels in Sasebo and Naha, Japan, under invoice No. 10039.
3. Invoice No. 10039 is in the amount of \$3,180,853.58. Invoice No. 10039 is attached as Exhibit A.
4. UBS has been trying to get payment of invoice No. 10039 from the U.S. Government since its submission. To date, the U.S. Government has not paid invoice No. 10039.

5. In the settlement agreement entered into between UBS and Wilhelmsen Premier Marine Fuels AS ("Wilhelmsen"), dated October 22, 2007("Settlement Agreement"), UBS' \$3,180,853.58 claim against the U.S. Government relating to amounts invoiced pursuant to invoice number 10039 is defined as the "Government Claims". UBS is obligated to provide Wilhelmsen with

all correspondence exchanged between the U.S. Government and UBS concerning the Government Claims. UBS has complied with that requirement.

6. On March 8, 2007, UBS submitted a claim to the U.S. Government for costs incurred when it purchased fuel to meet the Government's oral request for surge capabilities that ultimately did not materialize. That fuel was resold at a loss. UBS' claim was submitted under invoice 10040 (the "Surge Claim").

7. Invoice 10040 is in the amount of \$3,550,783.66. Invoice 10004 is attached as Exhibit B.

8. The U.S. Government issued Modification 00004 in September 2007, indicating it would pay the Surge Claim. UBS then issued Invoice 100454 to recover amounts permitted in Modification 00004. Modification 00004 and Invoice 100454 are attached hereto as Exhibit C.

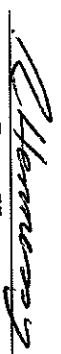
9. The Government Claims, referenced in the Settlement Agreement and invoiced under invoice number 10039, is a different and distinct claim for different and distinct goods and services from the Surge Claim. UBS has no obligation to provide Wilhelmsen information concerning its recovery of the Surge Claim.

10. Attorney Usher characterizes UBS' documentation regarding Invoice 10039 as "incomplete" on the basis that UBS' documents regarding the Government Claims produced to Wilhelmsen did not contain a "written claim certificate." See paragraph 7, p. 3 Usher Affidavit. He speculates that a "written claim certificate" must have been submitted in connection with the Surge Claim, otherwise the Surge Claim would not have been paid.

11. The U.S. Government requested UBS submit a "written claim certificate" in connection with the Surge Claim in August, 2007. UBS filed it in response to the Government's

request. To date, the U.S. Government has not requested such a submission in connection with the Government Claims and/or Invoice 10039. Accordingly, no such "written claim certificate" exists. For this reason, one was not produced to Wilhelmsen.

Pursuant to 28 United States Code §1746, I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Executed at Morningside, QLD, Australia, on June 17, 2008.


Rose Hennessy



INTERNATIONAL

USS - UBS INTERNATIONAL
 PO Box 579
 MORNINGSIDE QLD 4170
 Ph: 07 3902 0800
 Fx: 07 3902 0600

ABN 45 740 315 754

Tax Invoice 10039
 Date 07.03.2007
 Account # 1383

Customer
DEFENSE FINANCE & ACCOUNTING SERVICE Fuels Accting & Payments Div Attn: DFAS CO-CVDBA Po Box 182317 COLUMBUS OH 432186251

Port / Ship To :
SHIP NAME: PORT: JAPAN CONTRACT NO: SP0600-06-D-0391

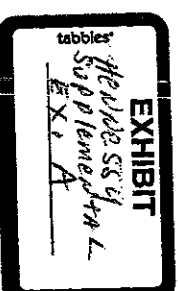
P.O. No.	TERMS	REP	SHIP DATE	VIA	DUE DATE	
	10 Days					
ITEM CODE	QTY	U.O.M.	DESCRIPTION	PRICE	AMOUNT	GST
FUEL	1	EACH	CLAIM DATED 7TH MARCH, 2007			0.00
FUEL	1	EACH	USNS BRUCE HEEZEN	162,752.99	162,752.99	0.00
FUEL	1	EACH	USNS DAHL	1,075,798.08	1,075,798.08	0.00
FUEL	1	EACH	USNS WATSON	1,097,354.50	1,097,354.50	0.00
FUEL	1	EACH	USNS WATKINS	844,948.01	844,948.01	0.00

		BANKING ACCOUNT DETAILS: ACCOUNT NAME: USS - UBS INTERNATIONAL BANK NAME: NATIONAL AUSTRALIA BANK B.S.B: 084-391 ACCOUNT: 46507-3883 Please note Invoice in: UNITED STATES DOLLARS	
SALE AMOUNT \$3,180,853.58 GST \$0.00 TOTAL DUE (USD) \$3,180,853.58 AMOUNT PAID \$3,180,853.58 AMOUNT DUE \$0.00			

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USS - UBS INTERNATIONAL
 PO Box 579
 MORNINGSIDE QLD 4170
 Ph: 07 3902 0800
 Fx: 07 3902 0600

ABN 45 740 315 754

Tax Invoice 10040
 Date 08.03.2007
 Account # 1383

Customer
DEFENSE FINANCE & ACCOUNTING SERVICE Fuels Accting & Payments Div Attn: DFAS CO-CVDBBA Po Box 182317 COLUMBUS OH 432186251

Port / Ship To :
SHIP NAME: PORT: JAPAN CONTRACT NO: SP0600-06-D-0391

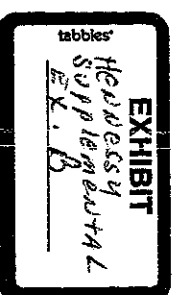
P.O. No.	TERMS	REP	SHIP DATE	VIA	DUE DATE	
	10 Days					
ITEM CODE	QTY	U.O.M.	DESCRIPTION	PRICE	AMOUNT	GST
BARGE	1	HRS	BARGE COSTS	1,320,000.00	1,320,000.00	0.00
FUEL	1	EACH	TANK CHARGES	19,545.01	19,545.01	0.00
FUEL	1	EACH	FUEL (MGO)	2,211,238.65	2,211,238.65	0.00

BANKING ACCOUNT DETAILS:	
ACCOUNT NAME: USS - UBS INTERNATIONAL	
BANK NAME: NATIONAL AUSTRALIA BANK	
B.S.B:	084-391
ACCOUNT:	46507-3883
Please note Invoice in: UNITED STATES DOLLARS	
SALE AMOUNT	\$3,550,783.66
GST	\$0.00
TOTAL DUE (USD)	\$3,550,783.66
AMOUNT PAID	\$3,550,783.66
AMOUNT DUE	\$0.00

Code Invoice: 01

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INTERNATIONAL

USS - UBS INTERNATIONAL
 PO Box 579
 MORNINGSIDE QLD 4170
 Ph: 07 3902 0800
 Fx: 07 3902 0600

ABN 45 740 315 754

Tax Invoice 10454

Date 24.09.2007
 Account # 1383

Customer
DEFENSE FINANCE & ACCOUNTING SERVICE Fuels Acctg & Payments Div Attn: DFAS CO-CVDBBA Po Box 182317 COLUMBUS OH 432186251

Port / Ship To :
CONTRACT NO: SP0800-06-D-0391

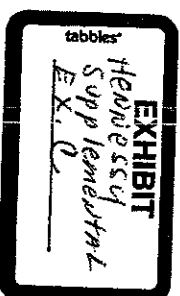
P.O. No.	TERMS	REP	SHIP DATE	VIA	DUE DATE	
	10 Days					
ITEM CODE	QTY	U.O.M.	DESCRIPTION	PRICE	AMOUNT	GST
0820-ONETIN	1		ORAL ORDER AS PER ATTACHED AMENDMENT NO P00004	3,550,783.66	3,550,783.66	0.00

		BANKING ACCOUNT DETAILS: ACCOUNT NAME: USS - UBS INTERNATIONAL BANK NAME: NATIONAL AUSTRALIA BANK B.S.B: 084-391 ACCOUNT: 46507-3883											
Please note Invoice in: UNITED STATES DOLLARS		<table> <tr> <td>SALE AMOUNT</td> <td>\$3,550,783.66</td> </tr> <tr> <td>GST</td> <td>\$0.00</td> </tr> <tr> <td>TOTAL DUE (USD)</td> <td>\$3,550,783.66</td> </tr> <tr> <td>AMOUNT PAID</td> <td>\$3,550,783.66</td> </tr> <tr> <td>AMOUNT DUE</td> <td>\$0.00</td> </tr> </table>		SALE AMOUNT	\$3,550,783.66	GST	\$0.00	TOTAL DUE (USD)	\$3,550,783.66	AMOUNT PAID	\$3,550,783.66	AMOUNT DUE	\$0.00
SALE AMOUNT	\$3,550,783.66												
GST	\$0.00												
TOTAL DUE (USD)	\$3,550,783.66												
AMOUNT PAID	\$3,550,783.66												
AMOUNT DUE	\$0.00												

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1. On March 8, 2007, USS-UBS submitted a claim under Item 765-61 (Sasebo, Japan) in accordance with FAR 33.206 for \$3,550,783.66 for costs incurred in response to the Government's request for surge capabilities to meet requirements that did not materialize. USS-UBS claimed that it purchased fuel to meet the anticipated surge during the period December 2006 through March 2007, which it subsequently sold at a loss. This claim was processed under contract clause 11.03-5(d) DISPUTES and FAR 52.233-1 DISPUTES.
2. Pursuant to subsequent review of the claim and responses from all concerned parties, the Contracting Officer has determined that the subject claim is valid and the Contractor will be paid the amount of \$3,550,783.66.

TOTAL SUM to be paid: \$3,550,783.66

3. The Contractor agrees that this modification settles all claims by the Contractor under the contract relative to Line Item 765-61 arising out of or in any way related to Military Sealift Command's request for surge capacity during the period November 1, 2006 through March 30, 2007, and hereby fully, finally and unconditionally releases and discharges the Government from any and all liability, claims, impact costs, demands, causes of action, and legal expenses, accrued, known or unknown, which the Contractor has or might have relating thereto, including, without limitation, all obligations of the Government to make further payments or to carry out any further undertakings. The Government reserves all rights under the contract, including but not limited to, the right to claim damages for any previous delivery of fuel.
4. All other terms and conditions of the contract remain unchanged.